No. 4835.

IN THE

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

The City of Los Angeles, a municipal corporation George E. Cryer, Mayor of the City of Los Angeles, and Robert Lee Heath, Chief of Police of the City of Los Angeles,

Appellants,

vs.

United Dredging Company, a corporation,

Appellee.

APPELLANTS' BRIEF.

JESS E. STEPHENS,
City Attorney;
LUCIUS P. GREEN,
Assistant City Attorney, and
CECIL A. BORDEN,
Deputy City Attorney,
Attorneys for Appellants.

Parker, Stone & Baird Co., Law Printers, Los Angeles.

No. 4835.

IN THE

United States

Circuit Court of Appeals,

FOR THE NINTH CIRCUIT.

The City of Los Angeles, a municipal corporation George E. Cryer, Mayor of the City of Los Angeles, and Robert Lee Heath, Chief of Police of the City of Los Angeles,

Appellants,

vs.

United Dredging Company, a corporation,

Appellee.

APPELLANTS' BRIEF.

This is an appeal from the decree of the District Court for the Southern District of California, Southern Division, granting an injunction enjoining and restraining appellants from enforcing, as to appellee, the provisions of a certain ordinance of the City of Los Angeles, hereinafter referred to.

In accordance with the stipulation for consolidation on appeal, appearing on page 16 of the transcript of the

record, this appeal is also prosecuted from a decree of the same court rendered at the same time in a case of identical nature, entitled, "Fred Franks, *et al.*, etc. v. the City of Los Angeles, *et al.*, No. H-120-J, Equity," with which the instant case was consolidated and tried, and in which judgment was rendered upon the evidence introduced in the case at bar.

STATEMENT OF FACTS.

The facts of the controversy are as follows:

At the time this action was instituted in the lower court, in August of 1924, appellee, a corporation organized and existing under the laws of the state of Delaware, was operating steam dredges in and around Los Angeles harbor, formerly the harbor of San Pedro, in Los Angeles county, state of California, and within the corporate boundaries of the City of Los Angeles, for the purpose of deepening and widening the navigable waters of the harbor, and at said time was engaged in fulfilling contracts for certain work of this nature with the Government of the United States.

At said time, there was in effect an ordinance of the City of Los Angeles known as "No. 33,512 (New Series)", (as amended by Ordinances Nos. 38,872, 38,873, 41,463 and 47,457 (New Series)), enacted December 21, 1915, creating a board of mechanical engineers, prescribing their powers and duties, and regulating the construction, operation and inspection (among other mechanical contrivances) of steam boilers and steam generating appliances, and, further, regulating and prescribing the qualifications of persons engaged in their operation.

By the ordinance, it is made a misdemeanor for any person, firm or corporation to operate such boilers or appliances without having first submitted same to an inspection and procuring a license therefor from the board, and making it a further misdemeanor to employ or permit any person to use or operate the same, other than an engineer duly licensed as such by the board.

The appellee, in violation of the said provisions of said ordinance, operated the steam equipment of its said dredges, consisting of boilers and other steam generating apparatus, as defined by the ordinance, without submitting same to the inspection required and without procuring the prescribed license authorizing such operation, and, in additon, employed persons unlicensed by said board as operatives thereof.

For the purpose of enforcing said ordinance, appellants caused the arrest of the employees of appellee who were acting in violation thereof, and threatened further arrests if such violations continued.

As a result thereof, this action was instituted by appellee for the purpose of enjoining the enforcement of said ordinance on constitutional grounds and on the ground that the enactment of said ordinance is an unwarranted invasion by the municipality of a field of legislation over which the Federal Government has assumed complete jurisdiction.

The question presented to the lower court, which it decided adversely to appellants, and the question which the court is here called upon to determine, is whether or not dredges such as are operated by appellee in dredging operations in the Los Angeles Harbor are of

the classes of vessels which are required to be inspected and to be operated by licensed engineers by the laws of the United States Government. If they are, it must be conceded that the jurisdiction of the United States Government in this respect is exclusive, but, if not, that the City of Los Angeles may, in the exercise of its police powers, impose any valid and reasonable regulation respecting the boiler equipment on such dredges and the licensing of engineers employed thereon.

ARGUMENT.

The authority of the United States Government in relation to inspection of vessels is provided for by chapter 1, title LII of the Revised Statutes of the United States, appearing on page 852 of the second edition, and chapter 212, Sec. 10, 35, Stat. 428. Title LII deals generally with the regulation of steam vessels. As to vessels subject to United States inspection, it is there provided as follows:

> "Section 4399. Every vessel propelled, in whole or in part, by steam shall be deemed a steam vessel, within the meaning of this title."
>
> "Section 4400. All steam vessels navigating any waters of the United States which are common highways of commerce, or open to general or competitive navigation, excepting public vessels of the United States, vessels of other countries, and boats propelled, in whole or in part, by steam for navigating canals, shall be subject to the provisions of this title."

Here it is clearly provided, in terms so definite as to admit of no question or doubt, what class of vessels is subject to United States inspection, viz.: "every vessel propelled, in whole or in part, by steam,"—those being the steam vessels comprehended by the succeeding section,

No. 4400, which provides that "all steam vessels, propelled, in whole or in part, by steam shall be subject to the provisions of this title." That fact, we submit, must be one of the first points of inquiry in determining the question of jurisdiction here. An inspection of the record as to whether or not the dredges operated by the appellee are within the definition of section 4399 and 4400 of the Revised Statutes, discloses no allegations of the pleadings nor evidence which indicate in any manner that such dredges are steam vessels, within the meaning of said sections, and, by reason thereof, subject, as to inspection, to the jurisdiction of the United States Government.

Other sections of chapter 1, title LII, refer in detail to the type of vessel which Congress intended to be covered by United States inspection regulations. Section 4426 provides that, "The hull and boiler of every ferry boat, canal boat, yacht, or other small craft of like character, *propelled by steam,* shall be inspected under the provisions of this title." Again, in section 4427, it is provided that, "The hull and boiler of every tug boat, towing boat and freight boat shall be inspected under the provisions of this title."

The purpose of the legislation, as indicating that it was not designed to affect a dredge of the character set forth in the complaint, is fully disclosed in the decision in the case of Hartranft v. Du Pont, 118 U. S. Rep. 226, where the court stated:

> "The Repauno was a vessel propelled by steam and navigating the Delaware River, which is a water of the United States, and a common highway of commerce. She was, therefore, by the terms of

Sec. 4400 of the Revised Statutes, made subject to the provisions of title 52. But, if there were any doubt about the application of the inspection laws to the Repauno, it would be removed by Sec. 4426. It seems to us clear that the Repauno comes within the class of boats described in this section. Of course, she bears no resemblance to a canal-boat, but she only differs from a ferry-boat, as it is generally understood, in not conveying passengers for hire; and she differs from a yacht in not being sea-going, if, in fact, she is not sea-going, and in not being designed and used for pleasure merely. But, if neither a ferry-boat nor a yacht, she clearly falls within the meaning of the phrase 'other small craft of like character.' If such a boat, so constructed and used, is not included in that phrase, it would be difficult to name any that would be. If it is argued that the Repauno is not such a craft as Congress would require to carry a licensed engineer and a licensed pilot, the reply is, that, as Sec. 4426 makes this requirement of a canal-boat propelled by steam, and subjects it to the other provisions of law for the better security of life, there is no reason why the same exactions should not be made of the boat in question.

"The reason of the law applies to the Repauno. *The purpose of title 52 is primarily the protection of the passengers and crew and property on vessels propelled by steam.* The law was passed also to protect the lives and property of persons on other boats and at the wharves. The Repauno was of sufficient size to cause peril to life and property by an explosion of her boilers. She was not a skiff. She was not a mere toy incapable of doing harm. The plaintiff's superintendent, who daily, and his workmen, who occasionally were carried back and forth upon her, and the pilot and engineer, who were re-

quired for her navigation, and the people in other boats who passed her on the water, or those who stood on the docks where she landed, were entitled to the same protection which the law provided against the explosion of the boilers of larger craft. A boat propelled by steam, which habitually carries four persons and sometimes more, and is capable of carrying twenty-five, ought to be subject to inspection. The fact that, if her boiler should explode or her hull spring a leak, probably only four lives would be imperilled, does not occur to us as ground why she should be exempted from the provisions of the law requiring inspection of vessels propelled by steam.

"In reaching this conclusion we have not overlooked the case of United States v. The Mollie, 2 Woods, 318. In that case the craft in question was of smaller dimensions than the Repauno, and was occasionally run by her owners for amusement on the Buffalo Bayou below Houston, Texas. She was held not to be within the inspection laws.

"It may be difficult to draw the line between vessels propelled by steam which are so small and insignificant that they do not come within the inspection laws, and larger boats which do. But we are clearly of opinion that the Repauno belongs to the latter class, and that the penalty sued for in this case was lawfully enforced. The judgment of the Circuit Court must, therefore, be reversed."

No Legislation by Congress Upon the Subject of Inspection of Dredgers.

While the decision of the court in the case at bar is based upon the construction of chapter 212, section 10, 35 Statutes, 428, relating to inspection of seagoing barges, and not upon the provisions of sections 4399 and 4400,

of chapter 1, title LII, *supra;* in order to disabuse the mind of this court of any impression that provision for the inspection of dredges is made by federal statutes other than that upon which the decision is based, we have entered into the foregoing discussion of sections 4399 and 4400, *supra.*

Chapter 212, section 10, 35 Stat., 428, *supra,* under which the District Court holds that the Federal Government has assumed jurisdiction over the inspection of dredges and equipment, to the exclusion of state or municipal control, reads as follows:

> "Sec. 10. That on and after January first, nineteen hundred and nine, the local inspectors of steamboats shall at least once in every year inspect the hull and equipment of every seagoing barge of one hundred gross tons or over, and shall satisfy themselves that such barge is of a structure suitable for the service in which she is to be employed, has suitable accommodations for the crew, and is in a condition to warrant the belief that she may be used in navigation with safety to life. They shall then issue a certificate of inspection in the manner and for the purposes prescribed in sections forty-four hundred and twenty-one and forty-four hundred and twenty-three of the Revised Statutes."

It is at once apparent from a perusal of the foregoing section that Congress in enacting it contemplated only barges designed and constructed and customarily used for traversing the open seas, such as freight barges, rock barges, oil barges, coal barges, and other barges, lighters or scows of like nature whose primary and only office is to navigate and transport cargoes across the open seas, either under their own power or in tow.

A dredge is neither designed nor constructed for such use. Her sole and only function is to excavate inland and shallow coastal waterways; not to traverse the sea, except incidental to her usual employment, or to engage in transportation or navigation, and the mere fact that she has a hull or float similar to a barge and is occasionally moved from one harbor to another, does not in any way or at all bring her within the classification of "seagoing barges."

No mariner could possibly confuse the two, or designate a dredge a seagoing barge, or a seagoing barge a dredge; and it is difficult to believe that in enacting this statute, its framers, who must have been possessed of more than ordinary knowledge of this subject, intended by the use of the descriptive noun "seagoing barge" to include dredges.

Webster defines a "barge" as

> "A roomy boat, usually flat-bottomed and used principally in harbors and on rivers and canals for the conveyance of passengers or goods, as a coal barge. It may have sails or means of self-propulsion, but is more often towed."

"Seagoing" is defined by Webster as

> "Designed or adapted for sailing the open seas in distinction from rivers or harbors; as a seagoing tug."

The same term is defined by the Standard Dictionary as

> "Adapted for use on the ocean; skillful in or accustomed to navigation on the high seas; seafaring."

A "dredge" is defined by Webster as

> "A machine for scooping up or removing earth, as in excavating or deepening stream channels, building levees, digging ditches, etc. There are three principal varieties constructed: (1) with a series of buckets on an endless chain; (2) with a pump or suction tube; (3) with a single bucket or grab at the end of an arm."

The same term is defined by reference to the language of complainants in the case of Bartlett v. Steam Dredge No. 14 (Mich.), 107 Mich. 74, 64 N. W. 951, as follows:

> "The dredge hull is virtually a large scow, with a boiler, engine, and different kinds of machinery; a crane, a boom, and a dipper. It has no means of propulsion, except by towing, nor any rudder. The dredge is used for digging material under water, and is not used for transportation. It is the same thing as a steam shovel on land. It has no master, and it is not used for transporting passengers, freight or anything."

Continuing, the court stated:

> "The sole purpose of these barges was to dig, not to navigate. They are not moved from place to place for the purpose of navigation, as are vessels engaged in commerce, nor are they intended to be used for transporting passengers or freight or the material which they bring up from the lake or river beds. * * * It certainly would be a forced construction to hold that such structures 'are used or intended to be used in navigating the waters of the state.' * * * The term 'vessel' is defined by Congress as 'including every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the

water.' A dredge is incapable of being used as a means of transportation on the water, except by removing its machinery and transforming it into something for which it was never intended to be used. Barges are vessels within the admiralty jurisdiction and subject to maritime liens. Citing: Dick Keys, 1 Biss. 408, Fed. Cas. No. 3898; Disbrow v. Walsh Bros., 36 Fed. 607.

"So, also, are lighters used in conveying lumber to vessels lying in deep water. Citing: The Lighter Case, 1 Brown Adm. 334, Fed. Cas. No. 5307."

The case of Muellerweise v. Pile Driver E. O. A., 69 Fed. 1005, was one involving a libel which was filed to recover supplies furnished at Alpena, Mich., to the pile driver E. O. A. The libel alleges that said vessel was used for commerce and navigation. The answer denied the jurisdiction of the court, and denied that said pile driver was competent to perform any voyages or trips of a nature to subject the craft to the admiralty and maritime jurisdiction of the court, and denied that the pile driver had any master during the times mentioned in the libel. The answer further pleaded that the pile driver is a platform or a float upon which is erected the ordinary derrick and appliances for the use of a pile-driving hammer, and a small stationary engine to run said hammer; that said float and appliances are not used in commerce and navigation, but are used simply for the purpose of driving piles about the docks in the harbor of Alpena and in Alpena River. The court stated:

"The character and uses of the E. O. A. are substantially as set forth in the answer. * * * This scow or floating platform upon which the pile driver

was erected was about 60 feet long, 20 feet beam, and 2½ feet deep, and, so far as its carrying capacity was concerned, was therefore of upward of five tons burden. The E. O. A. was not enrolled or licensed. The engine and boiler, the main use of which was to operate the pile hammer, were never inspected, nor was the man in charge of the craft, whose duty it was to operate the hammer, ever licensed as a master, nor did he profess to be a seaman."

Continuing, the court stated:

"It must pertain in some way to the navigation of a vessel, having carrying capacity, and employed as an instrument of travel, trade or commerce, although its form or means of propulsion are immaterial. (Citing cases.) The fact that a structure floated on the water does not make it a ship or a vessel. Citing: Cope v. Dry Dock Co., 119 U. S. 627; The Pulaski, 33 Fed. 383; The Hendrick Hudson, 3 Ben. 419, Fed. Cas. No. 6355.

"In the last case it is said: 'The fact that the structure has a shape of a vessel, or has been once used as a vessel, or could by proper appliances be again used as such, cannot affect the question. The test is the actual status of the structure as being fairly engaged in commerce and navigation.'

"It is true that the E. O. A. had carrying capacity, and was of more than 20 tons burden; but the fact remains that her only use and employment during all the time mentioned in the libel was not in commerce and navigation. * * * Since then her sole employment has been the driving of piles and building of docks. The transportation of the hammer, and, for its operation, of the portable en-

gine, and their support and floatage while in use, were the sole functions of this scow or platform. * * *

"The case of The Pioneer, 30 Fed. 206, which sustains a lien upon a dredge because it was capable of use in navigation without its machinery, although its only use was to transport the shovel and machinery with which it was equipped, is irreconcilable with the cases of The Hendrick Hudson, The Pilaski, Ruddiman v. A Scow Platform, 38 Fed. 158; The Big Jim, 61 Fed. 503."

In the case of United States v. Dunbar, 67 Fed. 783, the court said:

"This dredge boat (Tipperary Boy) was properly regarded as a manufacture or machine, and not as a vessel, inasmuch as it has no power of propelling itself, and is incapable of use save as a dredging machine."

In the case of The International, 83 Fed. 840, it was stated:

"Dredges and scows are held to be watercraft; they are intended for, and subject to, use only upon the water, and are consequently so shaped and constructed as to be navigated. That they are without independent means of propulsion is immaterial. *In this respect they resemble barges and similar vessels.*" (Italics ours.)

In the case of Commonwealth v. Breakwater Co. (Mass.), 100 N. E. 1035, the barges or lighters there involved were used for transporting stone in the construction of a breakwater at Provincetown, Mass. The barge or lighter was loaded with stone at dock in Rockport, and then was towed in as straight a course

as navigation would permit across the high seas to the harbor of Provincetown, where it was unloaded. The barge in question, "No. 43", was built at Baltimore. Her tonnage was 330 net tons. Her dimensions were, length 115 feet over all, 91 feet over bottom, and width 35 feet, with two bulkheads extending its entire length, both ends being square and shaped alike, but not vertical, and the bottom being flat. She had no sails or means of self-propulsion, nor rudder, and could progress only by being towed. She had a deck house in which were a boiler, pump, two engines, and sleeping quarters. The boiler was used for loading and unloading its cargo and weighing anchor.

In the case of The Mamie (a steam pleasure yacht), 5 Fed. Rep. 813, the question was presented whether she belonged to a class of vessels within the scope and purview of the Limited Liability Act. The Limited Liability Act of Congress was passed in 1851 and was modeled after the early English acts. The act itself extends in terms to all vessels, and contains no restrictions except such as are specified in the last section. (Revised Statutes, Sec. 4289.) This act "shall not apply to the owners of any canal boat, barge, or lighter, or to any vessel of any description whatsoever, used in rivers or inland navigation." Vessels not specifically named in this exception are, *prima facie,* at least, entitled to the benefit of the act. The court undertook to define and consider the characteristics of the boats named in the exception, and upon this point said:

> "The exceptions in the act itself indicate the intention of Congress to restrict its benefits to what is generally known as maritime commerce, though

it may also happen to be commerce between the states. They are:

"First: 'Canal-boats.' These are ordinarily, though not always, used upon artificial waters, within the limits of a single state.

"Second: 'Barges' were defined by Webster, in his dictionary of 1851, the year the act was passed, (1) as 'pleasure boats, or boats of state, furnished with elegant apartments, canopies, and cushions, equipped with a band of rowers, and decked with flags and streamers, used by officers or magistrates'; and (2) 'a flat-bottomed vessel of burden for the loading and unloading of ships.' In the latter sense it was undoubtedly used by Congress, and in that sense barges are synonymous with lighters, and are used wholly in local navigation. In later years the word has been used to designate a class of large vessels, sometimes costing from $15,000 to $50,000, carrying large cargoes, and depending for their motive power wholly or in part upon steamers, to which they are attached by tow-lines, and employed to a very large extent in interstate commerce upon the lakes. Whether the owners of such barges would not be entitled to the benefits of the Limited Liability Act, is an open question. Undoubtedly they are within the letter of the exception, but as they are a class of vessels which was unknown at the time the act was passed, it would seem they are not within its spirit. I see no reason in principle why they are not as much within the act as the propellers which furnish them their motive power.

"It is possible, however, that the use of the word 'barges' in the Revised Statutes of 1873 may indicate an intention on the part of Congress to extend the exemption to this class of vessels.

"Third: 'Lighters'—a well-known class of vessels, used in assisting to load and unload other vessels."

"A barge is a flat-bottomed freight boat or lighter for harbor and inland waters."

Monongahela Coal Co. v. Hardsaw, 77 N. E. 365.

It is conceded that if the dredge in question were denuded of its dredging machinery, housing and superstructure, and were decked over, it could be converted thereby into a seagoing barge, but, until this is done, it retains the character of a dredge.

As an example, it is well known to the court that old sailing ships and steamers are often converted into seagoing barges by the same process, *viz.,* removing the masts, rigging, boilers and machinery, and equipping them with the necessary towing bits and apparatus.

For illustration, the attention of the court is directed to the numerous barges of this type in use on this coast by the various oil companies for transporting oil from port to port. Until such transformation is made, it cannot be said that merely because the vessel has a hull that could be converted into a seagoing barge, she is a "seagoing barge," or that she would thereby be relieved from the necessity of inspection or license, as prescribed by federal statute.

That the appellee, prior to the filing of this action, never considered its dredges "seagoing barges," is manifest from the fact that, according to the testimony of its own witnesses, inspection of its dredges by Government inspectors, as required by said section 10, had never been made nor requested, yet if such dredges are in fact

"seagoing barges," their operation without such inspection was and is an open violation of federal law, by which appellee knowingly subjects itself to the possibility of the imposition of severe penalties.

From the testimony of the local Government inspectors, called on behalf of appellants, appearing on pages 26, 27 and 28 of the transcript, it is apparent that such dredges are not considered, either by the Department of Commerce of the United States or by themselves, as inspectors, as falling within any of the classes of vessels required to be inspected under federal laws; and, further, that such dredges are not "seagoing barges," but are dredges.

The District Court in its opinion [Tr. p. 41] says:

"There was evidence offered to show that it is not the practice of the department charged with the duty to make inspection of vessels, to inspect barges, unless they are used directly in the work of transporting passengers or freight. But if the statute has, as I have concluded, brought dredges of the kind involved in this suit within the federal inspection field, then it matters not whether the officers charged with inspection duty in practice include or exclude such a barge from inspection."

It must be remembered that this is a matter of statutory construction. The statute involved does not, by its terms, include dredges, but is limited to seagoing barges, and for this reason the interpretation placed upon it by officers charged with its administration must be accepted by the court, unless there are very cogent reasons to the contrary.

Logan v. Davis, 233 U. S. 613.

In the foregoing case, at page 627, the court said:

> "The situation, therefore, calls for the application of the settled rule that the practical interpretation of an ambiguous or uncertain statute by the executive department charged with its administration is entitled to the highest respect, and, if acted upon for a number of years, will not be disturbed except for very cogent reasons. *United States v. Moore,* 95 U. S. 760, 763; *Hastings and Dakota Railroad Co. v. Whitney,* 132 U. S. 357, 366; United States v. Alabama Great Southern Railroad Co., 142 U. S. 615, 621; Kindred v. Union Pacific Railroad Co., 225 U. S. 582, 596."

In *Jacobs v. Prichard,* 223 U. S. 200, at page 205, the court said:

> "When a statute entrusted the carrying out of its own provisions to one of the executive departments of the government, the interpretation of the statute by such department will be followed by the courts unless there are most cogent reasons to the contrary. Pritchard v. Jacobs, 46 Wash. 562, 570; United States v. Moore, 95 U. S. 760, 764; Edwards v. Darby, 12 Wheat. 206; Brown v. United States, 113 U. S. 568, 574; Louisiana v. Garfield, 211 U. S. 70, 78; Robertson v. Downing, 127 U. S. 607, 614; United States v. State Bank, 6 Peters 29, 40."

In *Louisiana v. Jack,* 244 U. S. 397, at page 406, the court said:

> "This contemporary construction of the act by the two law officers of the state charged with acting under it is persuasive authority as to its true meaning, and, upon full consideration, we think it is the correct interpretation of it."

In *First National Bank v. United States,* 206 Fed. 374, at page 379, in referring to the construction which the administrative branch of the Federal Government had placed upon a statute, said:

> "This is the interpretation of this act of Congress which was given to it by the secretary of the treasury and by the attorney general, who were charged with the duty of executing it, and it is an established rule of the national courts that the contemporaneous construction given to an act of Congress by those charged with its execution, though not controlling, is entitled to great weight, and should not be disregarded or overturned except for cogent reasons, nor unless it is clear that their construction was wrong."

In *State v. Gordon,* 181 S. W. 1016, at page 1021, the Supreme Court of Missouri, in construing a legislative enactment, said:

> "* * * we could, if the above conditions presented all of the facts and showed all of the difficulties, very readily (if there were not other and additional items in dispute) and speedily settle this case by invoking the well recognized rule of statutory construction that the meaning put upon the words of these many similar appropriation acts by the executive officers of the state upon whom the duty of interpretation falls, is of great weight, and, absent other qualifying considerations, decisive (Schawacker v. McLaughlin, 139 Mo. 333, 40 S. W. 935; Darling v. Potts, 118 Mo. 506, 24 S. W. 461; Ross v. Baltimore Company, 111 Mo. 18, 19 S. W. 541; Barber Asphalt Paving Co. v. Meservey, 103 Mo. App. 186, 77 S. W. 137), especially when coupled with the passive acquiescence of the Legislature for almost forty years."

In *State v. Moore,* 69 N. W. 373, at page 378, the Supreme Court of Nebraska said:

> "We are not without the aid of a construction placed on acts similar to this by the other departments of the government. We are aware that such construction is not conclusive, but when the Legislature, in framing an act, resorts to language similar in its import to the language of other acts, which have received a practical construction by the executive departments and by the Legislature itself, it is fair to presume that the language was used in the later act with a view to the construction so given the earlier."

In *State v. Nashville Club,* 154 S. W. 1151, at page 1154, the Supreme Court of Tennessee said:

> "A construction of a statute or the Constitution, not emanating from judicial decision, but adopted by the legislative or executive departments of the state, and long accepted by the various agencies of government and the people, will usually be accepted as correct by the courts."

It is conceded that dredges are vessels as defined by federal statute, and they may, therefore, be within the admiralty jurisdiction of the United States. But this alone is insufficient to relieve them from regulations imposed by a valid exercise of the police power of the municipality within whose confines they are operating.

That municipalities have power to prescribe harbor regulations for the protection of life and property where such regulations do not conflict with any law of Congress regulating commerce, or with the general admiralty juris-

diction conferred on the courts of the United States, is indisputable.

The James Gray v. The John Fraser (Cushing v. The John Fraser), 21 How. 184;
Gulf etc. Co. v. Hefley, 158 U. S. 104;
Hemington v. Georgia, 163 U. S. 311;
U. S. v. St. Louis & M. V. T. Co., 184 U. S. 255.

The mere fact that Congress has the power to regulate all shipping, including the operation of dredges, on the navigable waters of the United States, does not mean that the United States has *exclusive* jurisdiction over such matters, and unless Congress has legislated relative thereto, either the state or the municipality within whose boundaries such waters may lie, may, in the valid exercise of its police power, prescribe such regulations as may be necessary for the protection of life and property and the convenient and economical use of the waters and wharves of the harbor.

Cooley v. Board of Wardens, 12 How. 299;
Ex parte McNiel, 13 Wall. 236;
Wilson v. McNamee, 102 U. S. 572;
Olsen v. Smith, 195 U. S. 332.

That regulations requiring boiler inspection are for the purpose of protecting life and property, and are therefore a valid and proper exercise of the police power of the municipality, cannot be disputed. In the case of dredges operating in proximity to expensive shipping and docks loaded with human life, and valuable merchandise, large numbers of persons and property of great value are affected, and it is only right and proper that

these persons and this property should be protected by appropriate regulations.

Since the Federal Government has failed to exercise its authority to regulate the operation of dredges in its harbors, it is not only the right but the duty of the City of Los Angeles to do so, and to thus protect the lives and property of its citizens.

Federal Regulation of Marine Engineers Limited to Engineers of Steam Vessels.

The learned District Court held that the City of Los Angeles may not enforce the regulations of said ordinances in requiring the licensing of engineers employed upon said dredges to operate boilers and machinery. This assertion is based upon the theory that employees of said dredges are seamen and as such are subject solely to the control of the Federal Government and are not in any manner subject to the jurisdiction of the City of Los Angeles, and that the Federal Congress has by act duly passed governed the requirements of seamen.

By the provisions of said chapter 1, title LII, it is provided, in section 4438:

> "The boards of local inspectors shall license and classify the masters, chief mates, engineers and pilots of all steam-vessels. It shall be unlawful to employ any person, or for any person to serve as a master, chief mate, engineer, or pilot on any steamer, who is not licensed by the inspectors; and anyone violating this section shall be liable to a penalty of one hundred dollars for each offense."

Also, in section 4441:

"Whenever any person applies for authority to perform the duties of engineer of any steam vessel, the (inspector) (inspectors) shall examine the applicant as to his knowledge of steam machinery, and his experience as an engineer, and also the proofs which he produces in support of his claim; and if, upon full consideration, they are satisfied that his character, habits of life, knowledge, and experience in the duties of an engineer are all such as to authorize the belief that he is a suitable and safe person to be intrusted with the powers and duties of such a station, they shall grant him a license, authorizing him to be employed in such duties for the term of one year, in which they shall assign him to the appropriate class of engineers; but such license shall be suspended or revoked upon satisfactory proof of negligence, unskillfulness, intemperance, or the willful violation of any provision of this title. Whenever complaint is made against any engineer holding a license authorizing him to take charge of the boilers and machinery of any steamer, that he has, through negligence or want of skill, permitted the boilers in his charge to burn or otherwise become in bad condition, or that he has not kept his engine and machinery in good working order, it shall be the duty of the inspectors, upon satisfactory proof of such negligence or want of skill, to revoke the license of such engineer and assign him to a lower grade or class of engineers, if they find him fitted therefor."

Engineers required to be licensed are those employed upon steam vessels of the character defined by sections 4399 and 4400. Engineers employed upon other craft not comprehended by these sections are not required to

be licensed by the Government of the United States; *i. e.*, no jurisdiction in this respect can be asserted as to such engineers, and for that reason such engineers may be subjected to suitable requirements by the City of Los Angeles, which will insure the employment of those competent to have charge of steam boilers and similar equipment. It is idle to assert that if the City of Los Angeles has jurisdiction over the dredge here in question, this authority will not be limited upon the theory that those employed as engineers may escape regulation under the laws of the United States Government. Their employment is not in connection with steam vessels, and consequently they are not required to be licensed by the United States Government. The wording of the statutes referred to is so clear that it must be manifest that the Department of Commerce could have taken no other attitude than that which it has taken, as evidenced by the testimony of the inspectors hereinbefore referred to.

For the foregoing reasons, it is respectfully submitted that the ordinance of the City of Los Angeles, above referred to, is a valid exercise of the police power of the municipality and is not an invasion of any legislation enacted by the Congress of the United States, and with all deference to the learned District Court, that its decree should be reversed.

Dated this 3rd day of September, 1926.

JESS E. STEPHENS,
City Attorney;
LUCIUS P. GREEN,
Assistant City Attorney, and
CECIL A. BORDEN,
Deputy City Attorney,
Attorneys for Appellants.